

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ANDRE PACHECO,

Plaintiff,

vs.

09-CV-1330

ZURLO, et al.,

Defendants.

Thomas J. McAvoy,
Sr. U.S. District Judge

DECISION & ORDER

This *pro se* civil rights action pursuant to 42 U.S.C. § 1983 was referred to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation dated February 8, 2011 recommended that the Defendants' motion for summary judgment be granted and that Plaintiff's complaint be dismissed in its entirety.

Plaintiff filed timely¹ objections to the Report-Recommendation, essentially raising the same arguments presented to the Magistrate Judge.

When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified

¹Plaintiff's Objections to the Report-Recommendation were supposedly handed to prison authorities for processing on February 17, 2011 - the day the affidavit of service by mail was notarized. Dkt. 37 at 8. Accordingly, Plaintiff's Objections are timely filed under the prisoner mailbox rule. See Houston v. Lack, 487 U.S. 266, 270-71 (1988); Noble v. Kelly, 246 F.3d 93, 97 (2d Cir. 2001).

proposed findings or recommendations to which objection is made.” See 28 U.S.C. § 636(b)(1). After such a review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.”

Id.

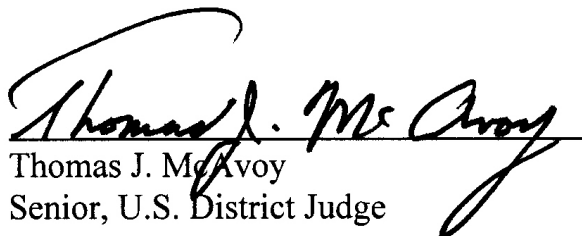
Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff’s objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Baxter for the reasons stated in the Report-Recommendation.

It is therefore **ORDERED** that:

1. Defendants’ motion for summary judgment (Dkt. No. 24) is **GRANTED**; and
2. Plaintiff’s complaint is **DISMISSED IN ITS ENTIRETY**.

IT IS SO ORDERED.

Dated: March 23, 2011


Thomas J. McAvoy
Senior, U.S. District Judge